IN THE

SUPREME COURT OF THE UNITED STATES

..... TERM, 1964

No. 1079

DEAN D. HILL, COUNTY AUDITOR OF CLARKE COUNTY, IOWA; GEORGE T. NICKLES, COUNTY AUDITOR OF WAYNE COUNTY, IOWA, AND ALBERT DRAKE, COUNTY AUDITOR OF RINGGOLD COUNTY, IOWA,

Appellants,

vs.

CHARLES L. DAVIS AND ARTHUR J. LEWIS,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

JURISDICTIONAL STATEMENT

WARD REYNOLDSON
Osceola, Iowa
Counsel for Appellants

May, 1964

E. L. MENSENDIEK, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

SUBJECT INDEX

Statement 1
Opinions Below 2
Grounds for Appellate Jurisdiction 3
(a) Nature of the Proceeding 3
(b) Dates of Judgment and Appeal 4
(c) Statute Conferring Jurisdiction upon the Supreme Court 5
(d) Cases Believed to Sustain Jurisdiction of the Supreme Court in this Appeal 5
(e) State Constitution and Statutes Involved 5
Questions Presented by the Appeal 7
Statement of the Case 8
Reasons for Plenary Consideration 12

Authorities Cited

CASES:

Baker v. *Carr*, 369 U.S. 186 ..... 4, 5, 9
Catlin v. *United States*, 324 U.S. 229 5
Davis v. *Synhorst*, 217 F. Supp. 492 (S.D. Iowa 1963) 2, 4, 10
Eichholz v. *Public Service Comm. of Missouri*, 306 U.S. 268 5
Florida Lime & Avocado Growers, Inc., v. *Jacobson*, 362 U.S. 73 5
Gray v. *Sanders*, 370 U.S. 921 5
Parr v. *United States*, 351 U.S. 513 5
Paul v. *United States*, 371 U.S. 245 5
United States v. *Georgia Public Service Commission*, 371 U.S. 285 5

CONSTITUTIONAL PROVISIONS:

United States Constitution:

Article IV, Section 4 ..... 3, 9
Due Process Clause of Amendment XIV 3
Equal Protection Clause of Amendment XIV 3, 12, 14

Iowa Constitution:

Article III, Section 34 .....4, 5, 6, 10
Article III, Section 35 .....4, 5, 6, 10-11
Article III, Section 36 .....4, 5, 6, 10

STATUTES:

United States Code:

28 U.S.C., Section 1253 5
28 U.S.C., Section 1343 3
28 U.S.C., Sections 2281, 2284 3
42 U.S.C., Sections 1983, 1988 3

Code of Iowa, 1962:

Chapters 41, 42 5

APPENDIX

APPENDIX I:

Memorandum Opinion and Judgment Entry, January 14, 1964 ..... A1

APPENDIX II:

Judgment Entry, May 3, 1963 ..... A10

IN THE

SUPREME COURT OF THE UNITED STATES

..... TERM, 1964

No.

DEAN D. HILL, COUNTY AUDITOR OF CLARKE COUNTY, IOWA; GEORGE T. NICKLES, COUNTY AUDITOR OF WAYNE COUNTY, IOWA; AND ALBERT DRAKE, COUNTY AUDITOR OF RINGGOLD COUNTY, IOWA,

Appellants,

vs.

CHARLES L. DAVIS AND ARTHUR J. LEWIS,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

JURISDICTIONAL STATEMENT

Appellants appeal from the Memorandum Opinion and Judgment Entry of a Three-Judge Court convened in the United States District Court for the Southern District of Iowa, filed and entered on January 14, 1964, the same being a final Order as to the validity of certain provisions of the Constitution of the State of Iowa. The

Judgment, in effect, was a Declaratory Judgment and granted a permanent Injunction against the various members of the Executive Council of the State of Iowa as such, and in their individual elective capacities, against the Attorney General of the State of Iowa, and against twelve County Auditors of the State of Iowa, who were joined in their respective elective capacities, and also as representatives of all of the County Auditors in the State of Iowa. The Judgment of the Three-Judge Court further required immediate corrective action of the General Assembly of the State of Iowa, under threat of further Federal Court intervention and provided a minimum apportionment formula, based upon Federal Constitutional Standards in conjunction with a defeated proposed Amendment to the Constitution of the State of Iowa. The Judgment effectively invalidates the basic portions of the Iowa Constitution relating to legislative apportionment, and all of the implementing reapportionment statutes enacted pursuant thereto.

OPINIONS BELOW

A. Final Order here sought to be reviewed:

Appendix I—Memorandum Opinion and Judgment Entry, both filed January 14, 1964.

B. Earlier Judgment Entry:

Appendix II—Judgment Entry, filed May 3, 1963.

C. Earlier Reported Opinion in the same case:

Davis v. *Synhorst*, 217 F. Supp. 492 (S.D. Iowa 1963), the Memorandum Opinion filed with the Judgment Entry of May 3, 1963.

GROUNDS FOR APPELLATE JURISDICTION

A. Nature of the Proceeding

This is an action for Declaratory Judgment and Injunction brought under the provisions of 28 U.S.C., §2281, to restrain, on the ground of unconstitutionality under the provisions of the Constitution of the United States, the actions of certain officers of the State of Iowa in the enforcement and execution of the Statutes of the State relating to the apportionment of the General Assembly, pertaining to both the Senate and the House of Representatives, the said Statutes being enacted pursuant to and in compliance with certain provisions of the Constitution of the State of Iowa. The plaintiffs alleged that the Statutes of the State of Iowa are in compliance with the mandates of the Constitution of the State of Iowa, but that the State Constitution, as amended by the people in 1904, as further amended in 1928, and by reason of population shifts over the years, creates such legislative malapportionment as to result in deprivation of civil rights as are guaranteed by the Due Process Clause and by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and further that the existing apportionment infringes upon the guarantee of a Republican form of Government as secured by Article IV, Section 4, of the United States Constitution.

The plaintiffs claimed that these violations of 42 U.S.C., Secs. 1983 and 1988 (17 Stat. 13 and 16 Stat. 144) conferred jurisdiction upon the United States District Court under 28 U.S.C., Sec. 1343. A Three-Judge Court was convened pursuant to 28 U.S.C., Secs. 2281 and 2284.

A Motion to Dismiss was filed by the defendants and was overruled by the Three-Judge Federal District Court,

and jurisdiction was assumed on the basis of *Baker* v. *Carr*, 369 U.S. 186.

The case proceeded to trial, and thereafter the majority of the Three-Judge Court filed its Memorandum Opinion on May 3, 1963, which opinion is now printed in 217 F. Supp. 492. Also, on May 3, 1963, the Court filed its Judgment Entry (See Appendix II); the Court at that time deferred opinion upon all Constitutional issues pending the outcome of an election to be held on December 3, 1963, on a proposed Constitutional Amendment which would repeal the existing Constitutional Apportionment provisions. The question of the validity of this proposed Constitutional Provision was also presented in the plaintiffs' Petition, but that question has now become moot.

The proposed plan was rejected by a majority of the voters on December 3, 1963, and the Three-Judge Court then reconvened.

On January 14, 1964, the Court filed its Memorandum Opinion and Judgment Entry (See Appendix I), holding that the Iowa Constitution was invidiously discriminatory and holding prospectively invalid Sections 34, 35 and 36 of Article III and the implementing legislation enacted pursuant thereto. The Court reserved jurisdiction to conduct further hearings and make further orders, but the Order was final as to the validity of the Iowa Constitutional provisions.

B. Dates of Judgment and Appeal

The final Order here sought to be reviewed was made and entered herein on January 14, 1964.

Notice of Appeal to the Supreme Court of the United States was filed by these appellants in the United States District Court for the Southern Division of Iowa on March 9, 1964.

C. Statute Conferring Jurisdiction upon the Supreme Court

This Appeal is taken pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 926, 28 U.S.C., Sec. 1253. This is an appeal from an order granting, after hearing, a permanent injunction in a civil action required by law to be heard and determined by a District Court of Three Judges.

D. Cases Believed to Sustain Jurisdiction of the Supreme Court in This Appeal

Appellants submit that the following cases decided by this Court sustain its jurisdiction of this appeal. *Baker* v. *Carr*, 369 U.S. 186; *Gray* v. *Sanders*, 370 U.S. 921; *United States* v. *Georgia Public Service Commission*, 371 U.S. 285; *Paul* v. *United States*, 371 U.S. 245; *Florida Lime & Avocado Growers, Inc.*, v. *Jacobsen*, 362 U.S. 73; *Eichholz* v. *Public Service Commission of State of Missouri*, 306 U.S. 268; *Parr* v. *United States*, 351 U.S. 513; *Catlin* v. *United States*, 324 U.S. 229.

E. State Constitution and Statutes Involved

While this action also involves the validity of Chapters 41 and 42 of the Code of Iowa, 1962, Volume 1, Pages 112-114, it is conceded by all of the parties that these Chapters were enacted pursuant to and in compliance with Article III, Sections 34, 35 and 36 of the Constitution of the State of Iowa, Volume 1, Pages lxxii—lxxiii, Code of Iowa, 1962. These three Sections of the Constitution of Iowa were adopted in their present form by Amendment No. 2 of 1904, otherwise known as the Twelfth Amendment, with the exception of the last clause of Section 34 which is italicized below, and which was adopted by the Amendment of 1928, otherwise known as the Six-

teenth Amendment. These Amendments creating the present Iowa Constitution are in Volume 1, Page lxxxiii, Code of Iowa, 1962, and the full taxt of these Sections now reads as follows:

SECTION 34 — SENATORS — NUMBER — METHOD OF APPORTIONMENT. The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law, and at the next session of the General Assembly held following the taking of the State and National Census, they shall be apportioned among the several counties or districts of the State, according to population as shown by the last preceding census, *but no county shall be entitled to more than one (1) Senator.*

SECTION 35 — REPRESENTATIVES — NUMBER — APPORTIONMENT. The House of Representatives shall consist of not more than one hundred eight members. The Ratio of representation shall be determined by the dividing of the whole number of the population of the State as shown by the last preceding State or National census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one Representative, but each county having a population in excess of the ratio number, as herein provided of three-fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

SECTION 36 — RATIO OF REPRESENTATION. The General Assembly shall, at the first regular session held following the adoption of this Amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives as hereinbefore required.

QUESTIONS PRESENTED BY THE APPEAL

The following questions, set out in the Notice of Appeal, or fairly comprised therein, are presented by this appeal:

(1) Is the present Legislative Apportionment in both the House of Representatives and in the Senate of the State of Iowa invidiously discriminatory against plaintiffs and others similarly situated?

(2) Are either or both the Second Amendment to the Constitution of the State of Iowa of 1904 or the Sixteenth Amendment of 1928 providing the method of legislative apportionment void and invalid?

(3) Are Chapters 41 and 42 of the Code of Iowa, 1962, enacted pursuant to and in compliance with State Constitutional Mandates, and setting up the present Senatorial and Representative Legislative Districts void and invalid?

Under the facts of this case, answer to these questions necessarily will raise the following subsidiary questions:

(a) Does the Equal Protection Clause require that one house of a bi-cameral State Legislature be apportioned solely upon the principle of strict numeral equality of population among districts?

(b) Does the Equal Protection Clause require that both houses of a bi-cameral State Legislature be apportioned solely upon the principle of substantial numeral equality of population among districts?

(c) Does the Equal Protection Clause prohibit to the people of a sovereign state, the power originally preserved to them by the Tenth Amendment to the United States Constitution, the power to adopt by State Constitution a bi-cameral State

Legislature in which one house is apportioned solely upon the principle of strict or substantial numerical equality of population among districts, and in which the membership of the other house is elected from traditional political sub-divisions, such as counties, and in which these members are elected by the people of their own sub-division?

(d) Does the present Iowa Constitution and apportionment laws enacted pursuant thereto, apportioning one house of a bi-cameral legislature on the basis of county lines, but with additional recognition of highly populated counties, and the other house upon the principle of substantial numeral equality of population, but with a limitation on the maximum number of Senators allowed any county, result in such invidious discrimination as to deprive citizens of equal protection of the laws?

(e) May a Federal Court, declare a State Constitutional Provision duly adopted and ratified by a majority of the people thereof, assuming it was valid at the time of its adoption, and for many years thereafter, to be prospectively null and void and impose upon the people of the State a new apportionment system in compliance with its own announced minimum standards by threat of Judicial intervention or judicial apportionment?

STATEMENT OF THE CASE

Plaintiffs, two labor union officials, and residents of the most populous county in Iowa, filed this class action challenging the Constitutionality of the Constitution and the laws of Iowa enacted pursuant thereto governing apportionment of both houses of the General Assembly. They alleged that under existing apportionment laws, their votes for elected members of the Legislature amount

to less than the votes of citizens of other Legislative Districts. Plaintiffs claimed that the disparity in population of districts electing State Senators and Representatives was invidiously discriminatory against the plaintiffs and their class and deprived them of equal protection of the laws, of liberty and property without due process of law, and of a Republican form of Government as guaranteed by Article IV, Section 4 of the United States Constitution. The named defendants were the Secretary of State, the Governor, the Lt. Governor, the Auditor of State, the Treasurer of State, the Secretary of Agriculture, all in their official elective capacities, and as the Executive Council of the State of Iowa, the Attorney General, and twelve County Auditors who were joined as representatives of their entire class.

All of the defendants were represented in the trial court by the Honorable Evan Hultman, Attorney General of Iowa, now an announced candidate for the office of Governor of the State, and who has refused to appeal the decision of the Three-Judge Federal District Court striking down the Iowa Constitution. The present appellants are three of the named original defendants and are appealing from the Judgment entered as representatives of their class and as representatives of all of the people of Iowa who are interested in protecting the validity of their Constitution.

A Motion to Dismiss was filed by the defendants and was overruled by the Three-Judge Court and jurisdiction was assumed on the basis of *Baker* v. *Carr*, 369 U.S. 186. All parties conceded that the apportionment statutes of Iowa then existing were in compliance with the Iowa Constitutional provisions and that the question before the Court was the validity of the Iowa Constitutional provisions themselves.

The case proceeded to trial, and thereafter the majority of the Three-Judge Court filed its Memorandum Opinion on May 3, 1963, now printed in 217 F. Supp. 492. Also on May 3, 1963, the Court filed its Judgment Entry (See Appendix II), but the Court deferred decision on the validity of the Iowa Constitutional provisions at that time, preferring to wait until submission of a proposed Constitutional Amendment to the voters on December 3, 1963. That proposed Constitutional Amendment, commonly called the Shaff Plan, was later rejected by a majority of the voters, and the Court then reconvened.

On January 14, 1964, the Court filed its Memorandum Opinion and Judgment Entry (See Appendix I), holding that the Iowa Constitutional Provisions, Sections 34, 35 and 36 of Article III, and the implementing legislation enacted pursuant thereto, are invidiously discriminatory against the plaintiffs and their class, and the Court declared them to be prospectively null and void and inoperative for all future elections to the General Assembly of the State of Iowa. The Three-Judge Court, under threat of further judicial intervention, then required the General Assembly of the State of Iowa to meet in Special Session, and to enact interim apportionment legislation in compliance with the general guide lines set out in the Memorandum Opinion, and the Court stated that it was reserving jurisdiction to conduct further hearings and make further orders.

The Three-Judge Court found that invidious discrimination was present in the pattern of representation alone, and refused to enter into the political thicket and attempt to determine whether the plaintiffs have established specific instances of discrimination against them and members of their class. The Three-Judge Court found, as is clearly required under the Iowa Constitution, Article III,

Section 35, that the House of Representatives consists of one hundred eight members, ninety-nine of which are elected from each of the ninety-nine counties, and the additional nine of which are elected one each from the nine most populous counties. The Court found that the House of Representatives is potentially controllable by the fifty-five smallest counties, containing 27.4 per cent of Iowa's total population and which can elect a majority of the House of Representatives. The Court found great disparity between the populations of the various representative districts, as would be expected in a house based upon a county-line theory.

With regard to the Senate, the Court found that in spite of the Constitutional mandate to apportion according to population, the limitation of one Senator per county, adopted by the Constitutional Amendment of 1928, worked a substantial discrimination against the more populous counties. The Court found that the mean Senatorial District population would be approximately 55,000 and that there are seven counties with populations substantially greater than that figure. Five of these seven counties have from two to five times the population of the average District. The Court found that the most extreme variance was approximately nine to one, and that 35.6 per cent of the population of the State could in theory elect a majority of the Senate.

There was no finding and no evidence in the record as to the population figures or applicable percentages of representation at the time the Constitutional provisions in question were adopted. Solely upon the basis of present population figures and numbers alone, the Court found the disparity in population among legislative representative and senatorial districts was invidiously discriminatory and declared the Iowa Constitutional provisions to be prospectively null and void.

This appeal was perfected from the Judgment Entry of the District Court, thus striking down the Iowa Constitution and declaring the apportionment provisions to be prospectively null and void and inoperative for all future elections to the General Assembly of the State of Iowa.

REASONS FOR PLENARY CONSIDERATION

The integrity of a duly enacted Constitution of a Sovereign State of these United States is here in question. The future composition of the General Assembly of the State of Iowa and the right of the people of an individual State to determine by Constitutional procedures their own representative form of Government awaits the outcome of this appeal.

The Iowa Reapportionment Case, unlike many of the cases across the country, squarely presents to the Court the question of the validity of a State Constitution in its bare form, when measured against the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. There is no question here of discriminatory legislation without approval of a majority of the people of the State, and there is likewise no question of a failure to comply with the State Constitution by the Legislature. The Iowa Constitution having been stricken down, there is presently no guide for the apportionment system in Iowa except that minimum standard imposed by the Three-Judge District Court in its Memorandum Opinion and Judgment Entry of January 14, 1964.

Probable jurisdiction has already been noted in several other cases raising constitutional issues involving various aspects of apportionment of Legislatures of other States. Some of these cases have already been submitted and await decision.

Apportionment litigation by its novelty, its gravity, its political aspects, and by its very nature calls for individual review and decision as to each State. The Constitution and laws of each State governing apportionment of the various types of State Legislatures, when challenged must be tested individually against the standard of Equal Protection which may be required by the United States Constitution. There is no occasion or reason to consider constitutionality of the apportionment laws of any one State as a guide for any other State. In this case, final adjudication of the validity of the Iowa Constitution was entered on January 14, 1964, by the Judgment Entry of the Three-Judge Court. The Judgment was that the Iowa Constitution and the Statutes enacted pursuant thereto were invidiously discriminatory, now unconstitutional, and prospectively null and void. Unless the Judgment is set aside or modified on appeal in this Court, the judicially fashioned minimum apportionment standards contained in the Memorandum Opinion of the District Court will forever be binding upon the State of Iowa, and the makeup of the General Assembly will be one house on strict population and any deviation from strict population in the other house must be on some rational, undefined, basis. This case is now in proper posture for effective and final review by this Court.

This appeal will necessitate decision of the extremities of Federal Jurisdiction in apportionment cases. The Iowa case will test the extremities of the Baker v. Carr doctrine, both as to the right of the people of a State to prescribe their own form of Government, and as to the propriety of the lower Federal Courts imposing their own unguided standards upon State apportionment.

This appeal also presents squarely the question of whether it is possible for the majority of the electors of a State to discriminate against themselves in such a fash-

ion as to deprive themselves of equal protection of the laws. The Iowa case involves a situation where a majority of the citizens of the State have adopted a Constitution for their guidance and where these plaintiffs-appellees now come before the Court and claim that they are the majority, but that they are being discriminated against by their own duly adopted Constitution.

Finally, this appeal will require decision of the limits of the Doctrine of invidious discrimination as used in Baker v. Carr. The Iowa Constitution, as amended in 1928, creates one house of a bi-cameral system on basically area factors, with additional representatives to the nine most populous counties, and the Iowa Senate is created basically on strict population, but with the limitation of a maximum of one senator per county. Should the Court find that the 1928 Amendment was invidiously discriminatory when enacted, then it is faced with decision of the system established by the 1904 Amendment. This system squarely presents the situation of one house based on strict population and the other based upon political sub-divisions, the ninety-nine Iowa Counties, with an additional member to each of the nine most populous counties.

The appeal presents substantial constitutional questions involving construction and application of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and fully justifies plenary consideration by this Court, including briefs on the merits and oral argument.

Respectfully submitted,

WARD REYNOLDSON
Osceola, Iowa
Counsel for Appellants

May, 1964

APPENDIX I

Memorandum Opinion

Before VAN OOSTERHOUT, Circuit Judge, STEPHENSON and McMANUS, District Judges.

STEPHENSON, District Judge.

This matter came on for further hearing pursuant to Order of this Court dated May 3, 1963, *Davis* v. *Synhorst*, 217 F. Supp. 492 (S.D. Iowa). In the opinion filed at that time, this Court expressed the view that the constitutional provisions providing for apportionment of the House of Representatives established by the 1904 amendment and the limitation of one senator to a county, established by the 1928 amendment "in combination prevent proportionate representation in both houses of the General Assembly, and that the constitutional provisions as they now stand, are invidiously discriminatory and in violation of the equal protection clause of the 14th amendment." (p. 501). However, the Court deferred opinion upon all constitutional issues then pending and withheld a decree to permit the voters of Iowa to vote on a new apportionment plan (called the Shaff Plan) which had passed two sessions of the state legislature and was scheduled for a vote of the people December 3, 1963. That vote has now been held and the Shaff Plan was rejected as follows: "no" 272,382; "yes" 190,424. The parties are now before us seeking further relief.

Plaintiffs contend that a decree should now be entered declaring that: said amendments (1904 and 1928

amendments) together with implementing legislation enacted pursuant thereto are invalid prospectively and after this date; that the invalidation of these amendments revives the sections as they existed prior to said amendments which in substance reinstates these sections as they existed in the Constitution of 1857 (Article III, Sections 34, 35, and 36, Iowa Constitution adopted in 1857);[1] that if the legislature fails to reapportion the state senatorial and representative districts in accordance with these sections of the 1857 Constitution by March 1, 1964, this Court direct elections for members of the legislature to be held on an at-large basis or in the alternative, upon the failure of the legislature to so apportion, this Court do so.

The defendants contend that: there is no revival of pre-existing state constitutional provisions after amendments thereto have been declared unconstitutional; that if said constitutional provisions (1904 and 1928 amendments) are declared unconstitutional, there would be no constitutional provisions governing apportionment of the Iowa General Assembly; that the Court should exercise the abstention doctrine and retain jurisdiction while the General Assembly initiates a new constitutional system for apportioning the legislature.

We will first consider the question of revival. Assuming this Court decrees that the 1904 and 1928 amendments in combination are invalid (we have already

1. We do not necessarily accept plaintiffs' view of apportionment under the Constitution of 1857. For instance, plaintiffs suggest a possible arrangement of House of Representative districts varying from one to eight representatives per district, the latter being Polk County. The plain language of Section 35 seems to indicate a maximum of two representatives was allotted to a county. Records indicate that during the period 1858-1882 the number of representatives per county or district varied from one to four. This section has not been construed in the Courts.

expressed that opinion), does that revive the constitutional provisions as they existed prior to said amendments? We do not think so.[2] We have found no Iowa cases where this problem arose in connection with constitutional provisions. Rules applicable to statutory construction are similar to constitutional construction. *Town of McGregor* v. *Baylies*, 19 Iowa 43, 46 (1865); *Badger* v. *Hoidale*, 88 F.2d 208, 211 (8 Cir. 1937); 11 Am. Jur., § 49 (p. 658). In *Talbott* v. *City of Des Moines*, 218 Iowa 1397, 1400, 257 N.W. 393, 395 (1934) the Court in holding a void amendment to a statute did not prevent revival of the previous statute said as follows: "If an act is repealed by an unconstitutional amendment, the former act remains in force when the unconstitutional amendment is declared void, providing this result gives effect to the legislature's intention." The matter of legislative intent is controlling. *Childs* v. *Shower*, 18 Iowa 261, 272 (1865); *Edge* v. *Brice*, 253 Iowa 710, 718, 113 N.W.2d 755, 759 (1962). Under the circumstances existing in this case it is difficult to say that the legislature and the people in adopting the 1904 scheme of apportionment intended that upon the occurrence of subsequent shifts in population rendering this scheme unconstitutional there would be a mandatory return to the requirements of the Constitution enacted in 1857.

The 1904 Amendments (Article III, Sections 34, 35, and 36) provided for the express repeal of the same sections in the Constitution of 1857. The 1928 Amendment contained no such repealer and dealt with only one section of the apportionment provisions (Section 34) by add-

2. Judge McManus, though still inclined toward the view of revival as expressed in his dissent (217 F. Supp. 509), at this stage of the case considers the alternate mode of relief herein adopted equally appropriate and therefore does not dissent.

ing thereto the words "but no county shall be entitled to more than one (1) senator." At the time the 1928 amendment was enacted Polk County had a population 3.2 times the population of the average senatorial district. Thus it can be argued that since the 1928 amendment was invalid when enacted it should now be declared invalid, and further that since representation in the house was not disproportionate at the time of enactment of the 1904 amendments and in the absence of guidance from the United States Supreme Court as to whether one house may be disproportionate, this court should now abstain from deciding the validity of the 1904 amendment. The practical results of such action would not be satisfactory. The people of Iowa have just rejected a plan whereby the senate was apportioned solely on population and the house solely on a county-area basis. The will of the people expressed by a vote on a constitutional amendment must be given serious consideration. *Davis v. Synhorst, supra,* pp. 500, 504. Under our Constitution the ultimate power is with the people. In Article I, Bill of Rights, Sec. 2, it is stated "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it."

In 1904 the legislature and the people had before them a complete apportionment plan. We are not considering the validity of a minor feature of that plan, but are determining whether that plan meets Federal Constitutional requirements which forbid invidious discrimination. We have already held that:

> The existing constitutional pattern for reapportionment of the house established by the 1904 amendment and the limitation of one senator to a county,

> established by the 1928 amendment, effectively prevent the legislature from accomplishing anything approaching proportionate representation in the respective branches of the legislature. *Davis* v. *Synhorst, supra,* p. 501.

It is the view of the Court that Article III, Sections 34, 35, and 36 of the Iowa Constitution which have as their object and purpose the establishment of a complete apportionment plan for the selection of members of both houses of the General Assembly are inseparable. Under the circumstances of this case it is our opinion that said sections in combination are inseparable. See *Smith* v. *Thompson,* 219 Iowa 888, 894-898, 258 N.W. 190, 194-196 (1935); *State* v. *Executive Council,* 207 Iowa 923, 934-935, 223 N.W. 737, 742 (1929).

There are other restrictions on apportionment contained in Article III. Section 37 provides:

> When a * * * senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a * * * senatorial, or representative district.

Plaintiffs have not attacked the validity of this section. It is the view of the court that Section 37, in itself, is not invidiously discriminatory. Neither is it an inseparable feature of the constitutional apportionment provisions. This section has remained intact commencing with its adoption in the Constitution of 1846 (Article III, Section 32).[3]

---

3. Although not dissenting, it is the view of the writer of this opinion that a persuasive argument can be made that the restriction against districting a county conflicts with the requirement of equal protection of the laws required by the Federal Constitution. See *Sims* v. *Frink,* 208 F. Supp. 431, 442 (M.D. Ala.

REMEDY

It has been suggested on the one hand that we declare the 1857 Constitution revived. We have found there is no pursuasive reason for reviving provisions of the 1857 Constitution. On the other hand it has been suggested we permit the legislature to commence action on new constitutional provisions. This should be done. But it is not enough. Steps should be taken now to remove the malapportionment that exists in the Iowa legislature. We hold that certain constitutional restrictions are prospectively invalid. The legislature should at once adopt an apportionment plan which conforms to federal constitutional requirements, and place the same in effect in time for this year's elections. New constitutional provisions can also be considered for ultimate submission to the people. If further guide lines are announced by the Supreme Court there is no reason why steps cannot be taken for the enactment of new constitutional provisions. In the meantime steps can be taken by legislative action to remedy the malapportionment that now exists. It should be emphasized we have held invalid only certain consti-

---

1962). The disparity now existing in Iowa between the population of the smallest county (Adams 7,468) and the largest county (Polk 266,315) lends support to the contention that such a requirement is unduly restrictive. The requirement of contiguity and the prohibition against districting within a county complicate the task of population apportionment. See 39 Iowa Law Rev. 558. Section 37 is an integral part of the county-oriented apportionment scheme. It was a part of the Constitution when the 1904 and 1928 amendments were adopted and must be considered as a part of the whole apportionment plan. Under the circumstances of this case it is the view of this writer that Section 37 is an inseparable part of an apportionment scheme that has been declared invalid by this Court. *Sincock v. Duffy*, 215 F. Supp. 169, 188, 195 (D. Delaware 1963); See also, *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 312 (1936); *Badger* v. *Hoidale*, 88 F.2d 208, 211 (8 Cir. 1937); 11 Am. Jur., Sec. 52, p. 661

tutional restrictions on apportionment. The many other constitutional provisions regarding the Legislative Department remain in effect. Until new constitutional provisions are adopted the legislature has the power to adopt an apportionment plan. Iowa Constitution, Article III, Section 9 provides in part as follows: "Each house * * * shall have all other powers necessary for a branch of the General Assembly of a free and independent State." The requirements of the Federal Constitution, of course, must be met in both the temporary apportionment plan and the ultimate constitutional provisions to be submitted to the people.

In the absence of further direction from the Supreme Court of the United States it is difficult to furnish precise standards for apportionment under Federal constitutional requirements. Upon consideration of the pronouncements that have been made by the Supreme Court of the United States and based on the evidence offered in this case including the matters concerning our State of which the Court takes judicial notice and in view of the expression of the voters of Iowa on the Shaff Plan, we suggest the following general guide lines for legislative apportionment in Iowa: (1) one house of the General Assembly shall be apportioned on a population basis; (2) any departure from a population basis in the other house shall be on a rational basis; extreme departures from a population basis such as now exist in the General Assembly, or as were proposed under the Shaff Plan which was rejected, cannot be justified; (3) a new apportionment plan in accordance with these standards shall be enacted by a special session of the legislature which will govern the composition of the General Assembly commencing with its regular session in 1965; (4) proposed amendments to the Constitution of the State of Iowa gov-

erning apportionment of the General Assembly deemed to be necessary shall be submitted to the people for ratification as rapidly as is feasible. In view of the time consumed in adopting constitutional amendments under present Iowa constitutional requirements, there is justification for delay in proposing constitutional amendments pending further direction from the Supreme Court of the United States which may be forthcoming in decisions regarding apportionment now under submission to that Court; (5) reapportionment is a legislative responsibility. We have no reason to believe that those concerned will not exercise their various responsibilities promptly. Judicial intervention is highly undesirable. We will not interfere unless compelled to do so by failure of the legislature to adopt an apportionment plan in accordance with the foregoing guide lines.

Judgment will be entered accordingly.

Judgment Entry

Pursuant to Memorandum Opinion bearing this date, which pursuant to Rule 52(a) constitutes this Court's findings of fact and conclusions of law, it is

ORDERED AND ADJUDGED as follows:

1. That this statutory three-judge court has been duly constituted and that this court has jurisdiction of the parties and subject matter of this action; that a justiciable cause of action is stated; that the plaintiffs have standing, to challenge the Iowa constitutional and statutory provisions for the apportionment of members of branches of the Iowa General Assembly, and that this court has the power to decide the controversy presented.

2. That the 12th Amendment (amendment 2 of 1904) and the 16th Amendment (amendment of 1928) to the

Iowa Constitution, which substitute new Sections 34, 35, and 36 to Article III of the 1857 Constitution, and implementing legislation enacted pursuant thereto, Chapters 41 and 42, Code of Iowa, 1962, are invidiously discriminatory against the plaintiffs and their class, and they are hereby declared prospectively null and void, and inoperative for all future elections to the General Assembly of the State of Iowa, except elections to fill vacancies in the present General Assembly.

3. That the provisions of Sections 34, 35, and 36 of Article III of the 1857 Constitution, repealed by the 1904 Amendment, are not revived.

4. That the State of Iowa, through constitutional procedures, has a right to provide for an apportionment plan which meets with Federal constitutional standards. Considerable time, even under favorable circumstances, will necessarily be required to perfect new State constitutional standards with respect to apportionment, and plaintiffs cannot be expected to wait for relief from invidious discrimination until such constitutional changes can be accomplished. The present General Assembly has the power to and is the appropriate body to provide for interim reapportionment which meets Federal constitutional standards, and action should be taken in time to make new apportionment provisions operative with respect to the 1964 election for members of the General Assembly which meets in regular session in 1965.

5. That this Court will abstain from attempting to impose at this time an apportionment plan provided a special session of the General Assembly of the State of Iowa is convened with reasonable promptness and action taken for reapportionment in accordance with the general guide lines for legislative apportionment set out in

the memorandum opinion bearing this date and filed herein.

6. That if a special session of the legislature is not called within a reasonable time, or if the legislature is convened and it becomes apparent that no substantial progress has been made to provide for constitutional apportionment, this court reserves jurisdiction to consider prescribing an interim plan of reapportionment.

7. That jurisdiction is reserved to conduct such further hearings and make such further orders as may be appropriate or necessary upon the Court's own motion or upon motion of either party.

Dated this 14th day of January, 1964.

APPENDIX II

Before VAN OOSTERHOUT, Circuit Judge, STEPHENSON and McMANUS, District Judges.

Pursuant to Memorandum Opinion bearing this date, which pursuant to Rule 52(a) constitutes this court's findings of fact and conclusions of law, it is

ORDERED AND ADJUDGED as follows:

1. That this statutory three-judge court has been duly constituted and that this court has jurisdiction of the parties and subject matter of this action insofar as it relates to existing Iowa constitutional provisions; that a justiciable cause of action is stated, and that the plaintiffs have standing to challenge the Iowa constitutional and statutory provisions for the apportionment of members of branches of the Iowa General Assembly.

2. That, in the exercise of its equity powers, this court defers opinion upon all constitutional issues until it is determined by the election to be held on December 3, 1963, whether the existing constitutional provisions or those provisions proposed by the Shaff amendment embody the state constitutional provisions for apportionment of members of the branches of the Iowa Legislature.

3. That the issue of the constitutionality of the Shaff Plan is not now ripe for decision and no opinion is expressed upon such issue.

4. That no decree will be entered at this time and nothing herein shall be construed as impairing in any way the power of the Legislature to perform its constitutional functions.

5. Jurisdiction is reserved to conduct such further hearings and make such further orders as may be appropriate or necessary upon the court's own motion or upon motion of either party.

6. That after the results of the election upon the Shaff amendment are available, a further hearing will be held with reasonable promptness upon the constitutional issues then remaining.

Dated this 3rd day of May, 1963.

JUN 16 1964

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1964

No. 1063

DEAN D. HILL, COUNTY AUDITOR OF CLARKE COUNTY, IOWA; GEORGE T. NICKLES, COUNTY AUDITOR OF WAYNE COUNTY, IOWA; AND ALBERT DRAKE, COUNTY AUDITOR OF RINGGOLD COUNTY, IOWA,

Appellants,

vs.

CHARLES L. DAVIS AND ARTHUR J. LEWIS,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF IN OPPOSITION TO MOTION TO DISMISS AND/OR AFFIRM

WARD REYNOLDSON
Osceola, Iowa
Counsel for Appellants

L. L. MENDENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106 HARRISON 1-0600

SUBJECT INDEX

Reports and Opinions Below 1
Grounds for Appellate Jurisdiction 2
Statutory Provisions Involved 2
Questions Presented for Review 4
Statement of the Case 4
Argument and Authorities 5
Conclusion 14

Authorities Cited

Cases

Cobbledick v. *United States*, 309 U.S. 323 13
Cohen v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 13
Forgay v. *Conrad*, 6 How. 201 13
French v. *Shoemaker*, 12 Wall. 86 12
St. Louis, Iron Mountain & Southern Ry. Co. v. *Southern Express Co.*, 108 U.S. 24 12

Constitutional Provisions

Equal Protection Clause of Amendment XIV 6

Statutes

United States Code—

28 U.S.C., Section 1253 ..... 2, 3, 4, 5, 14
28 U.S.C., Section 2101(b) 2, 3, 4
28 U.S.C., Section 2281 ..... 3, 8

IN THE

SUPREME COURT OF THE UNITED STATES

..... TERM, 1964

No.

DEAN D. HILL, COUNTY AUDITOR OF CLARKE COUNTY, IOWA; GEORGE T. NICKLES, COUNTY AUDITOR OF WAYNE COUNTY, IOWA; AND ALBERT DRAKE, COUNTY AUDITOR OF RINGGOLD COUNTY, IOWA,

Appellants,

vs.

CHARLES L. DAVIS AND ARTHUR J. LEWIS,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF IN OPPOSITION TO MOTION TO DISMISS AND OR AFFIRM

REPORTS AND OPINIONS BELOW

The Reports and Opinions below are set forth at page 2 of the Jurisdictional Statement now on file in this case.

The Final Order here sought to be reviewed is set out in Appendix I of the Jurisdictional Statement. Appendix II of the Jurisdictional Statement contains a previous Judgment Entry, and the Memorandum Opinion filed with the previous Judgment Entry is now reported in 217 F. Supp. 492 (S.D. Iowa 1963).

GROUNDS FOR APPELLATE JURISDICTION

The basis of the jurisdiction of the United States Supreme Court in this case is set forth in the Jurisdictional Statement of these Appellants at pages 3-6 thereof.

The Final Order here sought to be reviewed was made and entered herein on January 14, 1964. Notice of Appeal to the Supreme Court of the United States was filed by these Appellants in the United States District Court for the Southern Division of Iowa on March 9, 1964, said Notice of Appeal being filed within the sixty days prescribed by 28 U.S.C., Section 2101(b).

This Appeal was taken pursuant to provisions of the act of June 25, 1948, c. 646, 62 Stat. 926, 28 U.S.C., Section 1253. This is an Appeal from an order granting, after hearing, a permanent injunction in a civil action required by law to be heard and determined by a District Court of Three Judges.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State Constitutional and Statutory Provisions involved in the merits of this case are set forth at pages 5-6 of the Jurisdictional Statement now on file.

This matter is now before the Supreme Court of the United States on the Jurisdictional Statement of these Appellants, on the Motion to Dismiss and or Affirm of the Appellees, and on the Brief now being presented in resistance to the Appellees' Motion to Dismiss and or Affirm For purposes of determining the jurisdiction of the Court, the following Federal Statutory Provisions are also applicable: Act of June 25, 1948, c. 646, 62 Stat. 926, 28 U.S.C., Section 1253.

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an Order granting or denying, after Notice and Hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a District Court of Three Judges".

Act of June 25, 1948, c. 646, 62 Stat. 961, 28 U.S.C., Section 2101(b).

> "Any other direct Appeal to the Supreme Court which is authorized by law, from a decision of a District Court in any civil action, suit or proceedings, shall be taken within thirty days from the Judgment, Order or Decree, appealed from, if interlocutory, and within sixty days if final".

Act of June 25, 1948, c. 646, 62 Stat. 968, 28 U.S.C., Section 2281.

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an Order made by an administrative board or commission acting under State statutes, shall not be granted by any District Court or Judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and

determined by a District Court of Three Judges under Section 2284 of this Title".

QUESTIONS PRESENTED FOR REVIEW

The questions to be ultimately presented to the United States Supreme Court on this Appeal are set forth in the Jurisdictional Statement at pages 7-8.

The questions to be determined by the Supreme Court of the United States in deciding whether to note probable jurisdiction of this case are as follows:

(1) Is the Judgment Entry set forth at pages A8-A10 of the Jurisdictional Statement, filed on January 14, 1964, a Final Order within the meaning of 28 U.S.C., Section 2101(b)?

(2) Does the Final Order of January 14, 1964, meet the requirements of 28 U.S.C., Section 1253, pertaining to direct appeals to the Supreme Court of the United States from a District Court of Three Judges?

(3) Are the ultimate questions presented by the Appeal, as set forth at pages 7-8 of the Jurisdictional Statement so unsubstantial as to not require further argument or decision?

STATEMENT OF THE CASE

The statement of the case to be ultimately presented to the Supreme Court of the United States appears at pages 8-12 of the Jurisdictional Statement. The further question presented at this time is whether the Judgment Entry of the Three-Judge Court filed on January 14, 1964, is such a Final Order as would fall within the provisions of 28 U.S.C., Section 2101(b), permitting the period of

sixty days to pass during which time a Notice of Appeal may be filed. The further question raised by the Appellees in their Motion to Dismiss and or Affirm is whether this Judgment Entry, as set out in Appendix I of the Jurisdictional Statement, falls within the scope of those Judgments from which a direct Appeal to the Supreme Court of the United States is permitted by 28 U.S.C., Section 1253. The Appellees further raise the question as to whether the ultimate questions to be presented to the Court are so unsubstantial as to not require further presentation, argument or decision.

ARGUMENT AND AUTHORITIES

(a) Is a Substantial Question Presented?

The appellants will first dispose of the absurd contention of the appellees that no substantial question is presented by this Appeal.

The appellees, themselves, instituted this assault on the solemn Constitution of the people of the State of Iowa, by filing a complaint, which is twenty-seven pages in length. Thereafter, the appellees added a further Amendment of four pages to their complaint. The complaint alleges that the constitutional provisions of the State of Iowa, pertaining to the apportionment of the State Legislature are void and invalid as against certain provisions of the Federal Constitution. A period of several days was spent in the Court Room during the hearings on the Motions, trial, and various other hearings in the case in the Three-Judge District Court. A considerable amount of labor union money was spent in financing these appellees through this lawsuit. The question was obviously not unsubstantial when presented to the Federal District Court.

The questions presented to the District Court, and now on Appeal to this Court, involve the validity of duly adopted Amendments to the Constitution of the State of Iowa, and the Legislative Acts enacted pursuant thereto. The legal questions involved include the scope of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and more specifically whether that clause requires one or both Houses of a bi-cameral State Legislature to be apportioned solely upon the principle of strict numeral equality of population among representative districts. This Appeal further involves the question of whether a Federal Court may declare duly adopted State Constitutional provisions to be prospectively null and void when they may have been, at the time of their adoption, perfectly valid, and may have been perfectly valid for many years thereafter. This Appeal further involves the question of whether a Federal Court may impose upon the people of a State a new apportionment system in compliance with its own announced minimum standards by threat of judicial intervention or judicial apportionment when fully admitting that it has no guides from its superior Federal Courts.

As the members of this Honorable Court are well aware, the apportionment decisions of the various Three-Judge Federal District Courts across the country are in great conflict and turmoil. The appellees, themselves, admit at Page 8 of their Motion to Dismiss and or Affirm that the decision of the Three-Judge Court as indicated by its findings rested its finding of invidious discrimination solely upon the naked numbers involved.

While it is true that there are several other apportionment cases presently pending before this Honorable Court, it is also clear and true that the decisions in these cases will have no bearing whatsoever upon the validity of the

Iowa Constitution as it was enacted by the people of the State of Iowa, and as it existed before the decision now being appealed from. Should this Court refuse to note probable jurisdiction in the Iowa case, then the decision of the Three-Judge Court will be *res adjudicata* as far as the existing Iowa Constitution is concerned. It is true that the decisions of the cases now pending will give some guide to further minimum Federal standards, but that has nothing to do with the Order now being appealed from. It is the belief of these appellants that their Constitution is just as sacred as the Constitution of the States of New York or Maryland or Colorado or any of the other fifty sovereign States. It is likewise the belief of these appellants that the people of the fifty States have a right to determine their own legislative apportionment as long as it meets whatever minimum standards may be required by the provisions of the Constitution of the United States.

These appellants believe that the questions to be ultimately presented to the Court are so substantial and so important to all of the people of the State of Iowa, that they should not, at this point, be so lightly dismissed by these appellees who have, themselves, expended so much time and money, nor should they be lightly dismissed by this Court.

(b) Was the Judgment Entry a Final Injunctive Order?

The Order being appealed from and now being attacked by the appellees as not being a final order is set forth at pages A8-A10 of the Jurisdictional Statement.

Before looking at this Judgment Entry, itself, it is important to review the background of this case and the parties against whom it was brought, as well as the relief demanded by the appellees' Complaint. The defendants

in this case were the Governor, the Lt. Governor, the Secretary of State, the Auditor of State, the Treasurer of State, and the Secretary of Agriculture of the State of Iowa, in their elective capacities, and also collectively and individually as the Executive Council of the State of Iowa, the Attorney General, and twelve County Auditors in their individual and class capacities. The Attorney General of the State of Iowa is, under the Iowa Constitution, a member of the Judicial branch of Government, and all of the other persons named defendants are members of the Executive branch of Government. Not a single member of the Legislative branch of the Government was named a defendant to this lawsuit, with the exception that the Lt. Governor does preside over the Senate of the State of Iowa, but he is, nevertheless, a member of the Executive branch of Government.

The appellees in their Complaint specifically request that a special Three-Judge Court be called to hear and determine this cause as by law provided in 62 Stat. 968, 28 U.S.C., Section 2281. The appellees specifically request that the Court declare their rights and restrain the defendants from holding any further elections under the then existing Iowa Laws, and further ask for such other relief as may seem proper in the case. As is apparent from the state of this Appeal, a Three-Judge Court was called in compliance with the request of the appellees. It is clear that a Three-Judge Court would not and could not have been called unless these appellees were seeking injunctive relief. 62 Stat. 968, 28 U.S.C., Section 2281.

Pursuant to the Complaint of the appellees and the relief demanded therein, the case proceeded through various stages of hearing and trial, and eventually on January 14, 1964, a Judgment Entry was made therein.

Turning to the Judgment Entry, itself (Jurisdictional Statement, pp. A8-A10), an examination thereof discloses that injunctive relief was in fact granted, just as these appellees had requested, in both the form of a prohibitory and a mandatory injunction. The first paragraph of the Judgment Entry finds that the Three-Judge Court was duly constituted and that it has jurisdiction of the subject matter and the power to decide the controversy presented. Were an injunction not in question, the Three-Judge Court would not have been and could not have been appointed.

Turning now to Paragraphs 2 and 3 of the Judgment Entry being appealed from, and bearing in mind that the parties against whom this suit was brought are all persons having to do with the elective rather than the legislative process, and bearing in mind the injunctive relief sought by the appellees and the basis on which the Three-Judge Court was convened, it is perfectly obvious that the relief granted is in fact injunctive even though the words "prohibited" or "injunction" do not appear therein. While it is perfectly true that the Judgment Entry does not state that a Writ of Injunction should issue, yet it is equally true that a Writ of Injunction never issues in a Final Decree, when the parties are before the Court. These appellants do not believe that their right of direct appeal to the Supreme Court of the United States from a final Order of a Three-Judge Court, convened at the request of the complainants, the appellees now before the Court, can be denied them simply on the basis that the words "injunction" or "prohibited" or some similar word is not used when, in fact, the relief granted is exactly the relief sought by the appellees in their Complaint, and the basis on which Federal jurisdiction was assumed and a Three-Judge Court appointed at their request.

The practical effect of Paragraphs 2 and 3 of the Judgment Entry being appealed from is clearly to prevent these various public officers of the State of Iowa, who are charged by the laws of Iowa with the duty of administering the election process, from proceeding to hold their elections on the basis which the Constitution of the State of Iowa and the various laws and Statutes enacted pursuant thereto, require them to do. It would be extremely difficult to imagine how the intention of the Three-Judge Court could be expressed any more clearly, and it is likewise apparent that the Three-Judge Court was attempting to exercise the utmost judicial restraint in the phrasing of its Judgment Entry in the interests of State-Federal relationships and in the interests of judicial-executive relationships.

Turning now to Paragraphs 4, 5 and 6 of the Judgment Entry being appealed from, and bearing in mind the things above mentioned, these paragraphs clearly constitute a mandatory injunction. It must be remembered that the Governor of the State of Iowa was here joined as a party defendant in his elective capacity as Governor, and that in such capacity, he has the authority to call a special session of the State Legislature, which he did in fact do very shortly after the issuance of the Judgment Entry of January 14, 1964. These appellants do not believe that the Governor was joined as a party defendant to this suit simply for the nuisance value of doing so, and they do not believe that it was purely coincidence that the Governor, a defendant to this suit, should convene a special session of the State Legislature shortly after the entry of this Judgment against him as a defendant. At Page A6 of the Jurisdictional Statement, the Three-Judge Court states in its Memorandum Opinion: "The Legislature should at once adopt an apportionment plan which conforms to Federal Constitutional requirements, and place the same in ef-

fect in time for this year's elections." Reading this mandate in conjunction with Paragraph 4 of the Judgment Entry, found at Page A9 of the Jurisdictional Statement, it is difficult to conceive how much more mandatory a Court Order could be. These appellants do not believe that the Federal Three-Judge Court could have, itself, entered an Order convening the State Legislature to meet in special session, but that this Order, together with the directives contained in the Judgment Entry and the Memorandum Opinion prescribing the minimum standards which this particular Three-Judge Court would accept, clearly amount to a mandatory injunction against the defendants. It must be remembered that no member of the legislative branch of the State Government was a party defendant in this suit so that the Order must run against the various members of the executive branch who have the power to do what is prescribed by the Order. These appellants do not believe that the Three-Judge Court would presume to enter an Order against persons who were not within the jurisdiction of the Court.

Turning now to Paragraph 7 of the Judgment Entry, there is contained therein a statement reserving jurisdiction to conduct such further hearings and Orders as may be appropriate or necessary upon the Motion of the Court or any of the parties hereto. It is clear from the wording of the paragraph itself, as well as from events subsequent thereto, that this simple reservation of jurisdiction is such as might be made in any equity Decree, even one pertaining solely to divorce or child custody. It is clear from the Judgment Entry, itself, that no further particular action was contemplated at any given time, and that it could be a matter of months or even years before any other Order might be filed in this case. The appellants believe that it is the generally recognized principle of law that if a De-

cree or Order otherwise meets the requirements of finality, a reservation in the Order to make further Orders does not destroy the finality of the Decree or Order. *St. Louis, Iron Mountain and Southern Railway Company* v. *Southern Express Company*, 108 U.S. 24, 25 (1883); *French* v. *Shoemaker*, 12 Wall. 86, 98 (1870).

The appellants' position in this respect is confirmed by what did, in fact, happen subsequent to the filing of the Judgment Entry on January 14, 1964. The only further Orders entered herein were one denying a Temporary Stay Order to these appellants, one refusing a Petition of Intervention by certain members of the Legislature of the State of Iowa, and the Order entitled Memorandum and Judgment filed on March 27, 1964, which is contained in the appendix to the appellees' Motion to Dismiss and/or Affirm. That Order of March 27, 1964, pertains solely to approval of an act of the Legislature of the State of Iowa, passed in the Special Session called pursuant to the Order entered on January 14, 1964, and pertains only to the question of whether the Act passed complied with the requirements of the Judgment Entry of January 14, 1964. An inspection of the Order of March 27, 1964, discloses that jurisdiction was not retained therein to consider any further matters, and further, and most importantly, discloses that no reference is made to the Judgment Entry of January 14, 1964, in the nature of incorporating its provisions therein, and the only matter contained in the Decree at all is that Senate File 1 recently enacted by the 60th General Assembly of the State of Iowa is approved as an interim plan of apportionment. The appellants believe that the Memorandum and Judgment on March 27, 1964, by virtue of the fact that it makes no decision whatsoever on the merits of the cause, and by virtue of the fact that it does not even incorporate the previous Order, confirms the position of

these appellants that the Order of January 14, 1964, now being appealed from, was in fact a final Order and determinative of the matters contained in the Complaint filed by the appellees. *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-547 (1949); *Forgay* v. *Conrad*, 6 How. 201, 202-203 (1348); *Cobbledick* v. *United States*, 309 U.S. 323, 328 (1940).

The appellees, in their Motion to Dismiss and or Affirm go to great lengths to create the false impression that the notation of probable jurisdiction in this case will create great chaos in the elective process and turmoil among the people of Iowa. These appellants suggest that there is no greater chaos in the elective process than when the duly adopted Constitutional provisions of a State are stricken down and other standards imposed upon the people without adequate guides. The Three-Judge Court, itself, stated: "In the absence of further direction from the Supreme Court of the United States, it is difficult to furnish precise standards for apportionment under Federal Constitutional requirements." (Jurisdictional Statement, p. A7). The primary elections for candidates for the general election in November of 1964 have already been held in the interim plan of reapportionment and the notation of probable jurisdiction will have no bearing whatsoever on the 1964 elections. Another election will not be held until 1966, for the 1967 Session of the General Assembly, and we presume that the matter will be fully disposed of before that time.

The present appellants are three of the named original defendants, all of whom were joined as representatives of their entire class, and are appealing from the Judgment entered as representatives of their class as well as representatives of all of the people of Iowa who are interested in protecting the validity of their Constitution. All of the defendants were originally represented by the Attorney

General of the State of Iowa, now an announced candidate for the office of Governor of the State, and who has refused to appeal the decision of the Three-Judge Federal District Court striking down the Iowa Constitution. As the Court is well aware, the Attorney General and the parties whom he represents, have taken no position on this Appeal and are neither supporting nor resisting it. This factor does not make the questions involved any less substantial than they were at the time that these appellees filed their Complaint in this matter.

CONCLUSION

In summary and conclusion, the appellants feel that a review of the decision in question, together with the Memorandum Opinion of the same date, and considering the background of this case, bearing in mind the parties involved, can lead to no conclusion but that the Order being appealed from is a final Order granting a permanent injunction within the requirements of 62 Stat. 926, 28 U.S.C., Section 1253. The appellants believe that the case is now properly before the Supreme Court of the United States, and that probable jurisdiction of this matter should be noted. The appellants believe that on the hearing of the matter, after Briefs have been submitted, they will ultimately prevail, and that the case will be reversed.

The appellants believe that the allegation of the appellees that no substantial questions are presented is frivolous and absurd. The appellants further believe that it is clear under the law that the cases now pending before this Honorable Court will have no bearing, whatsoever, upon the decision being appealed from, since a refusal to hear and determine this case will amount to an affirmance of the decision of the Three-Judge Court, and will be binding

upon the people of the State of Iowa forever, regardless of what decisions may be reached in the cases of the other States.

Respectfully submitted,

WARD REYNOLDSON
Osceola, Iowa
Counsel for Appellants

Office Supreme Court, U.S.
FILED
JUN 1 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

..... TERM, 1964

No. 1079

DEAN D. HILL, County Auditor of Clark County, Iowa; GEORGE T. NICKLES, County Auditor of Wayne County, Iowa; and ALBERT DRAKE, County Auditor of Ringgold County, Iowa,
Appellants,

vs.

CHARLES L. DAVIS and ARTHUR J. LEWIS,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

APPELLEES' MOTION TO DISMISS AND OR AFFIRM AND BRIEF AND ARGUMENT IN SUPPORT THEREOF

HARRY H. SMITH
234-36 Badgerow Building
Sioux City, Iowa
ROBERT F. WILSON
201 Granby Building
Cedar Rapids, Iowa
C. A. FRERICHS
703 First National Bank Building
Waterloo, Iowa
Counsel for Appellees

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City, Mo., 64106, HArrison 1-2070

SUBJECT INDEX

Motion to Dismiss and or Affirm 1

Opinions Below 2

Jurisdiction 2

Purported Grounds for Appellate Jurisdiction 3

A. Nature of the Proceeding 3

B. Dates of Judgment and Appeal 4

C. Statute which appellants erroneously contend confer jurisdiction upon the Supreme Court 5

D. Cases cited by appellants do not sustain the jurisdiction of the Supreme Court in this Appeal 5

E. Cases sustaining lack of jurisdiction of the Supreme Court in this appeal 6

F. If a direct appeal were applicable, this appeal is untimely 7

Questions Presented by the Appeal Either Are or Shortly Will Be Insubstantial 7

Chaos in Government Will Be Avoided by an Affirmance Herein 9

Conclusion 10

Authorities Cited

CASES:

American Insurance Co. v. *Lucas*, 314 U.S. 575 7

Baker v. *Carr*, 369 U.S. 186, p. 188 ..... 3, 6

Catlin v. *United States*, 324 U.S. 229 6

Davis v. *Mann*, 32 L.W. 3015 8

Davis v. *Synhorst*, 217 F. Supp. (S. D. Iowa 1963) 2, 7

Eicholz v. *Public Service Commission*, 306 U.S. 268, p. 268 6

Florida Lime and Avocado Growers, Inc., v. *Jacobson*, 362 U.S. 73, p. 75 6

Gray v. *Saunders*, 372 U.S. 370, p. 373 6

Lucas v. *Forty-Fourth General Assembly of Colorado*, 32 L.W. 2076 8

Maryland Committee for Fair Representation v. *Tawes*, 31 L.W. 2155 8

Parr v. *United States*, 351 U.S. 513 6

Paul v. *United States*, 190 F. Supp. 645, pp. 659-60, 371 U.S. 245 6

Public Service Co. v. *Brashear Freight Lines*, 312 U.S. 621, pp. 625-26 6-7

Reynolds v. *Simms*, 208 F. Supp. 341 8

Roman v *Sincock*, 215 F. Supp. 169 8

WMAC, Inc., v. *Simon*, 31 L.W. 2121 8

STATUTES:

United States Code:

28 U.S.C., Section 1253 ..... 1, 5

28 U.S.C., Section 1343 2

28 U.S.C., Section 2101(b) 7

28 U.S.C., Sections 2201-2202 3

42 U.S.C., Sections 1983, 1988 2

MISCELLANEOUS:

6 Moore's Federal Practice, p. 30 7

APPENDIX

APPENDIX I:

Memorandum Opinion and Judgment Entry of March 27, 1964 ..... A1

IN THE

SUPREME COURT OF THE UNITED STATES

..... TERM, 1964

No.

DEAN D. HILL, County Auditor of Clark County, Iowa; GEORGE T. NICKLES, County Auditor of Wayne County, Iowa; and ALBERT DRAKE, County Auditor of Ringgold County, Iowa,
Appellants,

vs.

CHARLES L. DAVIS and ARTHUR J. LEWIS,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

MOTION TO DISMISS AND/OR AFFIRM

Appellees in the above entitled case move to dismiss the Appeal herein on the grounds that said purported Appeal is not in compliance with the provisions of the Act of June 25, 1948, c. 646, 62 Stat., 28 U.S.C. 1253, upon which appellants rely in total to sustain Jurisdiction of the Appeal, and/or to affirm the ruling of the Three-Judge Court herein inasmuch as the question presented is so insubstantial as not to require further argument.

OPINIONS BELOW

Appellants in their statement of Jurisdiction have set out in their Appendices the following opinions below:

A. Final Order here sought to be reviewed:

Appendix I—Memorandum Opinion and Judgment Entry, both filed January 14, 1964.

B. Earlier Judgment Entry:

Appendix II—Judgment Entry filed May 3, 1963.

C. Earlier Reported Opinion in the same case.

Davis v. *Synhorst*, 217 F. Supp. 492 (S. D. Iowa 1963).

The Memorandum Opinion filed with the Judgment Entry of May 3, 1963.

To these should be added:

D. Memorandum Opinion and Judgment Entry filed March 27, 1964, with reference to the interim apportionment measure enacted by the Special Session of the Iowa legislature and signed by the Governor of the State of Iowa set out in Appendix I herein.

JURISDICTION

Plaintiffs' action is based upon alleged violation of federally protected rights guaranteed by the equal protection clause found in Paragraph 1 of the Fourteenth Amendment to the Constitution of the United States. Jurisdiction was asserted by virtue of 42 U.S.C., Sections 1983 and 1988 and 28 U.S.C., Section 1343 (3) and relief by way of

Declaratory Judgment was asked pursuant to 28 U.S.C., Sections 2201-2202. In short, the action was based upon the teachings of *Baker* v. *Carr*, 369 U.S. 186.

The Three-Judge Court has held several hearings over the past two years and issued several Memorandum Opinions and Judgment Entries, one of which Judgment Entries is the subject of this purported Appeal by three of the twenty defendants who are party litigants. The other seventeen defendants, who are various State and County officials in Iowa, have not joined in the Appeal.

PURPORTED GROUNDS FOR APPELLATE JURISDICTION

A. Nature of the Proceeding

This is a class action brought by plaintiffs on behalf of themselves and other Iowans similarly situated. Defendants are State and County officials performing various duties in connection with conducting elections for members of the Iowa General Assembly. Plaintiffs assert invidious discrimination against them existed by reason of the disparity in their voting rights for members of each house of the Iowa General Assembly.

Plaintiffs sought a Declaratory Judgment on the constitutionality of the Iowa apportionment statutes to be followed by injunctive relief to correct the inequities arising from said unconstitutional statutes if necessary.

The Attorney General of Iowa represented all defendants during the following proceedings:

1. Hearing on Motion to Dismiss which was overruled.

2. Hearing on the merits which resulted in the finding of unconstitutionality of the Iowa apportionment stat-

utes but Judgment Entry of unconstitutionality was withheld pending a state-wide vote on a pending proposed constitutional amendment setting up a new legislative apportionment system (which was ultimately defeated).

3. A subsequent hearing following the defeat of the constitutional amendment to determine what further action was proper by the Three-Judge Court resulting in the Memorandum Opinion and Judgment Entry of January 14, 1964, from which three of the defendants wish to appeal.

Then on March 9, 1964, these three of the twenty defendants filed "Notice of Appeal" of the Judgment Entry of January 14, 1964, through new counsel.

Following this and in response to a motion requesting such action again by the Iowa Attorney General the Three-Judge Court reconvened on March 27, 1964, and took action on three matters then pending in the suit:

a. Approved the interim apportionment plan which had been duly enacted and approved by the Governor (Appendix I).

b. Denied a Stay Injunction urged by the three appellants. (This action was confirmed by Mr. Justice White on April 7, 1964.)

Appellants at this stage were represented by counsel other than the Attorney General of Iowa.

c. Denied a Petition of Intervention by interested citizens asking clarification of the Memorandum Opinion of January 14, 1964.

B. Dates of Judgment and Appeal

The Interlocutory Order sought to be reviewed was made and entered herein on January 14, 1964.

Notice of Appeal to the Supreme Court of the United States was filed by the appellants herein in the United

States District Court for the Southern Division of Iowa on March 9, 1964, some fifty-four days after the entry of interlocutory Order.

C. Statute Which Appellants Erroneously Contend Confer Jurisdiction upon the Supreme Court

Appellants state that "This Appeal is taken pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 926, 28 U.S.C., Sec. 1253". See appellants' Statement of Jurisdiction, page 5 (C).

28 U.S.C., Sec. 1253 provides as follows:

> "Direct Appeals from decisions of Three-Judge Courts. Except as otherwise provided by law, any party may appeal to the Supreme Court from an Order granting or denying, after notice and hearing, an Interlocutory or Permanent Injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a District Court of three Judges."

D. Cases Cited by Appellants Do Not Sustain the Jurisdiction of the Supreme Court in This Appeal

Appellants assert that "This is an Appeal from an Order granting, after hearing, *a Permanent Injunction* in a civil action required by law to be heard and determined by a District Court of Three Judges". (See Statement of Jurisdiction, p. 5, emphasis added.)

An examination of the Judgment Entry of January 14, 1964, clearly discloses that no injunction of any nature, interlocutory or permanent, issued in this suit. Consequently appellants are without a *direct* right of appeal to the U. S. Supreme Court under 28 U.S.C., Sec. 1253.

If appellants' cited cases are to support their position there should be cases present in which the Court assumed

jurisdiction under this statute when an injunction was neither granted nor denied.

Taking appellants' cited cases in order, we find:

(a) *Baker* v. *Carr* was a review of a Denial of Permanent Injunction.

(b) *Gray* v. *Saunders* was an Appeal from a Granting of an Injunction.

(c) *Florida Lime and Avocado Growers* v. *Jacobson* involved the dismissal of a Request for Injunction.

(d) *Paul* v. *United States* involved an Appeal where an Injunction had been issued.

(e) *Eicholz* v. *Public Service Commission of State of Missouri* was an Appeal from a denial of Permanent Injunction.

(f) *Parr* v. *United States and Catlin* v. *United States* deal with questions concerning the finality of orders for the purpose of appeal and are irrelevant to the issue being discussed.

Not one of the appellants' cited cases support their position that they may have a direct appeal to this Court. Indeed cases (a) through (e) above reinforce the notion that appeal may be had directly to this Court *only* from the actual *granting or denial of an Injunction* by the Three-Judge Court below. Since the Three-Judge Court below neither granted nor denied an Injunction in this case appellees have no right of direct appeal to this Court.

E. Cases Sustaining Lack of Jurisdiction of the Supreme Court in This Appeal

Appellees submit that the following authorities sustain the position that only orders *granting or denying an Interlocutory or Permanent Injunction* are *directly* appealable. *Public Service Commission* v. *Brashear Freight Lines*, 312

U.S. 621 at 625-626 (1941), and *American Insurance Company* v. *Lucas*, 314 U.S. 575 (1941). See also 6 Moore's Federal Practice, p. 30.

F. If a Direct Appeal Were Applicable, This Appeal Is Untimely

The Judgment Entry on its face is interlocutory rather than final. Since the Judgment Entry is in fact interlocutory the time for appeal under 28 U.S.C. 2101 (b) is 30 days for an interlocutory order. The Notice of Appeal herein was filed on the 54th day after Judgment Entry.

QUESTIONS PRESENTED BY THE APPEAL EITHER ARE OR SHORTLY WILL BE INSUBSTANTIAL

A short review of the main points of the basic Memorandum Opinion of the Three-Judge Court (*Davis* v. *Synhorst*, 217 F. Supp. 492 (S.D. Iowa 1963), indicates no unusual or difficult features to this reapportionment matter.

The Three-Judge Court found as follows:

1. The large disparities in both houses (18-1 in the house and 9-1 in senate) were obviously *prima facie* cases of invidious discrimination.

2. The defendants offered no evidence to justify the large disparities between the representative districts.

3. The methods of amending the Iowa Constitution by the legislature and through constitutional convention are inadequate for relief in matters of reapportionment since a malapportioned legislature is reluctant to reapportion itself and the legislature also has control of the size and make-up of any constitutional convention that might be voted by the people. In one instance, when the people of Iowa voted a constitutional convention the legislature re-

fused to enact the legislation necessary to carry out the people's mandate in this regard.

4. The record is replete with evidence of invidious discrimination against these plaintiffs and others similarly situated, but the Three-Judge Court found it unnecessary to make a finding in this respect since the invidious discrimination was present by the naked numbers involved.

5. The record shows that the history of Iowa prior to the limiting Constitutional Amendments of 1904 and 1928 was one of legislative representation primarily by population. Plaintiffs' Exhibits 3 and 4 detail the comparative population of the legislative districts from the founding of the State through the present time as of the time of each census. Appellees in their Statement of Jurisdiction, p. 11, erroneously allege that there is no such evidence in the record.

Finally the following reapportionment cases are pending before this Court which will answer any marginal question which might still be open in this Case. These cases are:

WMAC, Inc., v. *Simon*, 31 L.W. 2121.

Reynolds v. *Simms*, 208 F. Supp. 341.

Maryland Committee for Fair Representation v. *Tawes*, 31 L.W. 2155.

Davis v. *Mann*, 32 L.W. 3015.

Roman v. *Sincock*, 215 F. Supp. 169.

Lucas v. *Forty-fourth General Assembly of Colorado*, 32 L.W. 2076.

After the decisions in the above cases are handed down any questions presented by this case will be fully resolved.

CHAOS IN GOVERNMENT WILL BE AVOIDED BY AN AFFIRMANCE HEREIN

The Three-Judge Memorandum Opinion of March 27, 1964 (Appendix I herein), outlines substantially what has happened in Iowa since the Judgment Entry of January 14, 1964, from which appeal is taken herein. The Governor has called a special session of the Iowa legislature which in turn has adopted an interim reapportionment statute which was acceptable to the Governor and sixteen of the defendants in this litigation.

The three defendants appealing are County Auditors in three of Iowa's smallest Counties. It is difficult to imagine any hardship to these three County Auditors if this matter is affirmed.

On the other hand legislative candidates will be nominated in the June 1, 1964, primaries and will stand for election in November of 1964.

If this case should be reviewed, it would throw the residents of the State and the candidates for the legislature in a state of confusion as to whom the duly elected legislators should be and what districts should be in effect for the January, 1965, Iowa legislature.

On the other hand, if there is an affirmance the interim legislature can in due time enact constitutional amendments for legislative apportionment for ultimate submission to the people of Iowa for approval as provided in the Iowa Constitution.

CONCLUSION

Appellees submit that appellants have no right to a direct appeal herein since the Three-Judge Court abstained from either granting or denying injunctive relief, and in the alternative, appellees maintain that since the Judgment appealed from was interlocutory that the Notice of Appeal was untimely filed.

Finally, if a direct appeal were applicable no useful purpose would be served by a review herein inasmuch as there are no substantial questions herein and any possible marginal question will be answered by reapportionment cases already argued to this Court.

Respectfully submitted,

HARRY H. SMITH
234-236 Badgerow Building
Sioux City, Iowa

ROBERT F. WILSON
201 Granby Building
Cedar Rapids, Iowa

C. A. FRERICHS
703 First National Bank Building
Waterloo, Iowa
Counsel for Appellees

May, 1964

APPENDIX I

Memorandum and Judgment

Before VAN OOSTERHOUT, Circuit Judge,
STEPHENSON and McMANUS, District Judges

Defendants, appearing by the Attorney General of Iowa, request a determination of whether the apportionment statute entitled Senate File 1 recently enacted by the 60th General Assembly of Iowa, convened in special session February 24, 1964 and signed by the Governor of the State of Iowa, meets Federal Constitutional standards. Prior to enactment of this apportionment statute serious malapportionment existed in the Iowa General Assembly. 27.4% of the population of Iowa elected a majority of the members of the House of Representatives. The maximum disparity in population between representative districts was 18 to 1 (taking into consideration the largest county had 2 representatives). 35.6% of the population elected the majority of the members of the Senate. The maximum disparity in population between senatorial districts was 9 to 1. *Davis* v. *Synhorst*, 217 F. Supp. 492 (1963). This Court held that certain provisions of the Constitution of the State of Iowa and statutes enacted pursuant thereto were invidiously discriminatory and prospectively invalid as to all future elections to the General Assembly of the State of Iowa. This Court abstained from taking further action pending possible action by a Special Session of the General Assembly. *Davis* v. *Synhorst*, 225 F. Supp. 689 (1964).

In Senate File 1 the malapportionment in both houses of the General Assembly has been materially reduced. Approximately 48.3% of the population can elect a majority

of the members of the House of Representatives.* The maximum disparity in population between representative districts is approximately 2.23 to 1. Approximately 38.9% of the State's population can elect a majority of the members of the Senate. The maximum disparity in population between senatorial districts is approximately 3.20 to 1 (adjustment is made for the multiple representative districts).

The Court finds that substantial progress in correcting malapportionment in the General Assembly has been made by the enactment of Senate File 1. The large variance in population between the largest County, Polk, with a population of 266,315 and Adams County, with a population of 7,468, together with the Iowa Constitutional prohibition against districting within a County, complicates the task of population apportionment. Apportionment by legislative process is highly desirable. This Court should not intervene except under the most compelling circumstances. In the absence of further guidance from the Supreme Court of the United States, this Court is of the opinion that Senate File 1 is not so objectionable on Federal Constitutional grounds as to warrant disapproval as an interim plan of apportionment.

IT IS HEREBY ORDERED AND ADJUDGED THAT Senate File 1 recently enacted by the 60th General Assembly of the State of Iowa, convened in Special Session, is hereby approved as an interim plan of apportionment.

Dated this 27th day of March, 1964.

---

*This percentage figure varies depending on the Counties used in computing the percentages. For instance, see plaintiffs' exhibit 400 which indicates 44.02% of the population can elect 50% of the representatives.